



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 27, 1996

Mr. Clement H. Osimetha
Assistant City Attorney
Office of the City Attorney
City Hall
Dallas, Texas 75201

OR96-0422

Dear Mr. Clement:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 39263.

The City of Dallas (the "city") received a request for an offense report narrative and arrest report narrative. You assert that the requested information is excepted from disclosure pursuant to sections 552.101 and 552.108 of the Government Code.

Although the city received the request on February 22, 1996, the city did not request a decision from this office until March 5, 1996. *See* Gov't Code § 552.308(1) (timeliness of request can be determined by post office cancellation mark). Section 552.301 of the Government Code provides that:

(a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the exceptions under [chapter 552] must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions. The governmental body must ask for the attorney general's decision and state the exceptions that apply *within a reasonable time but not later than the 10th calendar day after the date of receiving the written request.* [Emphasis added.]

Chapter 552 thus imposes a duty on a governmental body seeking an open records decision to submit that request to this office within ten days after receipt of the request for

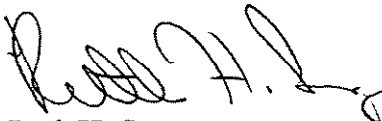
information. Failure to abide by this provision results in the presumption that information is public. Gov't Code § 552.302.

The presumption that information is public when the ten day deadline is not met can only be overcome by a compelling demonstration that the information at issue should not be made public, such as when information is made confidential by other law. See Open Records Decision No. 150 (1977) (presumption of openness overcome by showing information was made confidential by other law or affects third party interests). As section 552.108 is a discretionary exception that can be waived, you have waived your section 552.108 argument by failure to timely submit your request to this office. See Open Records Decision No. 216 (1978) at 2 (552.108 is discretionary exception).

You have also asserted that the information at issue is excepted from disclosure because you believe it implicates the privacy rights of a third party. Section 552.101 excepts from disclosure information "considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 excepts information from disclosure that would be an invasion of privacy under the test set out by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Under that test, information is excepted from disclosure by common-law privacy if the information is (1) highly intimate or embarrassing to a reasonable person and (2) of no legitimate public concern. *Id.* Thus, even intimate and embarrassing information may not be withheld from disclosure when there is a legitimate public interest in the information. As there is a legitimate public interest in criminal offenses and arrests, the information at issue may not be withheld.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref.: ID# 39263

Enclosures: Submitted documents

cc: Ms. Judy Hightower
P.O. Box 1072
Grapevine, Texas 76099
(w/o enclosure)